

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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NASROLLAH GASHTILI, an individual;  
INTEGRATED DYNAMIC SOLUTIONS,  
INC., a California corporation;

Plaintiffs,

v.

JB CARTER PROPERTIES II, LLC, a  
Nevada limited liability company; BARTUS  
CARTER, an individual; FASTRAN, LLC, a  
Nevada limited liability company,

Defendants.

Case No. 2:12-cv-00815-MMD-PAL

ORDER

(Second Renewed Motion for Atty Fees  
and Costs – dkt. no. 57)

**I. SUMMARY**

Before the Court is Defendant Nasrollah Gashtili and Integrated Dynamic Solutions, Inc.'s (collectively "IDS") Motion for Attorneys' Fees and Memorandum of Costs (dkt. no. 57.) The Court has also considered Plaintiffs' opposition and IDS' reply. For the reasons set forth below, IDS is entitled to \$53,238.50 in attorneys' fees.

**II. BACKGROUND**

This case arises out of alleged copyright infringement. The background facts of this case are recounted in significant detail in the Court's prior Order. (Dkt. no. 42.) The facts relevant to the instant motion are recounted below.

On April 23, 2013, the Court granted judgment in favor of IDS and against Plaintiffs, dismissing Plaintiffs' claims with prejudice. IDS brought a motion seeking costs and attorneys' fees under the Copyright Act. The Court found that Defendants were the

1 prevailing parties and entitled to reasonable attorneys' fees, but could not determine,  
 2 based on the records presented, whether the attorneys' fees requested were  
 3 reasonable. The Court granted Defendants' request for costs in the amount of \$373.50.  
 4 Defendants now bring this renewed motion for attorneys' fees curing the deficiencies  
 5 identified in this Court's prior Order.

### 6 **III. DISCUSSION**

#### 7 **A. Attorney's Fees**

8 Reasonable attorney's fees are based on the "lodestar" calculation set forth in  
 9 *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). See *Fischer v. SJB-P.D., Inc.*, 214 F.3d  
 10 1115, 1119 (9th Cir. 2000). The Court must first determine a reasonable fee by  
 11 multiplying "the number of hours reasonably expended on the litigation" by "a reasonable  
 12 hourly rate." *Hensley*, 461 U.S. at 433. Next, the court decides whether to adjust the  
 13 lodestar calculation based on an evaluation of the factors articulated in *Kerr v. Screen*  
 14 *Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), which have not been subsumed in the  
 15 lodestar calculation. See *Fischer*, 214 F.3d at 1119 (citation omitted).

16 The factors the Ninth Circuit set forth in *Kerr* are:

17 (1) the time and labor required, (2) the novelty and difficulty of the  
 18 questions involved, (3) the skill requisite to perform the legal service  
 19 properly, (4) the preclusion of other employment by the attorney due to  
 20 acceptance of the case, (5) the customary fee, (6) whether the fee is fixed  
 21 or contingent, (7) time limitations imposed by the client or the  
 circumstances, (8) the amount involved and the results obtained, (9) the  
 experience, reputation, and ability of the attorneys, (10) the "undesirability"  
 of the case, (11) the nature and length of the professional relationship with  
 the client, and (12) awards in similar cases.

22 *Kerr*, 526 F.2d at 70. Factors one through five are subsumed in the lodestar calculation.  
 23 See *Morales v. City of San Rafael*, 96 F.3d 359, 364 n. 9 (9th Cir. 1996). Further, the  
 24 sixth factor, whether the fee is fixed or contingent, may not be considered in the lodestar  
 25 calculation. See *Davis v. City & Cnty. of S.F.*, 976 F.2d 1536, 1549 (9th Cir. 1992),  
 26 *vacated in part on other grounds*, 984 F.2d 345 (9th Cir. 1993). Once calculated, the  
 27 "lodestar" is presumptively reasonable. See *Pennsylvania v. Delaware Valley Citizens'*  
 28 *Council for Clean Air*, 483 U.S. 711, 728 (1987). Finally, only in "rare and exceptional

cases” should a court adjust the lodestar figure. *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) (internal quotations omitted). *See also Fischer*, 214 F.3d at 1119 n. 4 (stating that the lodestar figure should only be adjusted in rare and exceptional cases).

### 1. Reasonable Hourly Rate

Courts consider the experience, skill, and reputation of the attorney requesting fees when determining the reasonableness of an hourly rate. *Webb v. Ada County*, 285 F.3d 829, 840 & n.6 (9th Cir. 2002). A reasonable hourly rate should reflect the prevailing market rates of attorneys practicing in the forum community for “similar services by lawyers of reasonably comparable skill, experience and reputation.” *See id.*; *see also Blum v. Stenson*, 465 U.S. 886, 895-96 n.11 (1984). To inform and assist the court in the exercise of its discretion, “[t]he party seeking an award of fees should submit evidence supporting the . . . rates claimed.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *see also Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1263 (9th Cir. 1987).

IDS requests reimbursement of fees averaging at \$525.70/hour for shareholders, \$338.84/hour for of counsel attorneys, \$345-\$425/hour for senior level associates, \$341.67/hour for middle level associates, \$290/hour for junior level associates, \$210/hour for law clerks, \$210/hour for paralegals, \$165/hour for legal assistants, and \$130/hour for docketing staff. Considering the experience, skill, and reputation of the attorneys requesting fees and the prevailing market rates in the forum, the Court finds \$475/hour for shareholders, \$350/hour for of counsel attorneys, \$345-375/hour for senior level associates, \$325/hour for middle level associates, \$275/hour for junior level associates, \$175/hour for law clerks, \$100/hour for paralegals, \$0/hour for legal assistants, and \$0/hour for docketing staff, to be reasonable. Thus, the Court adjusts the requested amounts accordingly.

### 2. Reasonable Hours Expended

In addition to evidence supporting the rates claimed, “[t]he party seeking an award of fees should submit evidence supporting the hours worked.” *Hensley*, 461 U.S. at 433;

1 see also *Jordan*, 815 F.2d at 1263. "Where the documentation of hours is inadequate,  
 2 the district court may reduce the award accordingly." *Hensley*, 461 U.S. at 433. "The  
 3 district court also should exclude from this initial fee calculation hours that were 'not  
 4 reasonably expended'." *Hensley*, 461 U.S. at 433-34 (citation omitted). "In other words,  
 5 the court has discretion to 'trim fat' from, or otherwise reduce, the number of hours  
 6 claimed to have been spent on the case." *Edwards v. Nat'l Business Factors, Inc.*, 897  
 7 F. Supp. 458, 460 (D. Nev. 1995) (quotation omitted); see also *Gates v. Deukmejian*,  
 8 987 F.2d 1392, 1399 (9th Cir. 1992).

9 The Court has reviewed IDS's submitted itemized billing and denies those fees  
 10 that are traditionally secretarial-type services, such as docketing, those of law clerks  
 11 attending hearings with attorneys, and fees associated with the person whose initials are  
 12 "CLN" as the Court cannot determine who that person is or their level of experience.

13 Thus, the time reasonably spent is:

14 Shareholder Rob Philips – 37.5 hours

15 Of Counsel F. Chris Austin – 7.75 hours

16 Senior Level Associate Laraine Burrell – 11.6 hours

17 Senior Level Associate Tyler Andrews – 43.8 hours

18 Senior Level Associate Peter Ajemian – 22.1 hours

19 Middle Level Associate Savera Sandhu-Smith – 4.5 hours

20 Junior Level Associate Bethany Rabe – 2.8 hours

21 Law Clerk Collin Seale – 12.3 hours

22 Paralegal Megan Sheffield - 0.7 hours

23 Paralegal Sara Haro – 7.35 hours

24 Legal Assistant Rae Ann Chavez – 0.0 hours

25 Docketing Clerk Chris Lengemann – 0.0 hours

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### 3. Lodestar Calculation and *Kerr* Factors

Calculating the reasonable fee by multiplying “the number of hours reasonably expended on the litigation” by “a reasonable hourly rate,” the Court determines the following as the lodestar calculation:


Shareholder Rob Philips – 37.5 hours x \$475.00	= \$17,812.50
Of Counsel F. Chris Austin – 7.75 hours x \$350.00	= \$2,712.50
Senior Associate Laraine Burrell – 11.6 hours x \$375.00	= \$4,350.00
Senior Associate Tyler Andrews – 43.8 hours x \$355.00	= \$15,549.00
Senior Associate Peter Ajemian – 22.1 hours x \$345.00	= \$7,624.50
Mid-Associate Savera Sandhu-Smith – 4.5 hours x \$325.00	= \$1,462.50
Junior Associate Bethany Rabe – 2.8 hours x \$275.00	= \$770.00
Law Clerk Collin Seale – 12.3 hours x \$175.00	= \$2,152.50
Paralegal Megan Sheffield - 0.7 hours x \$100.00	= \$70.00
Paralegal Sara Haro – 7.35 hours x \$100.00	= \$735.00
Legal Assistant Rae Ann Chavez – 0.0 hours x \$0	= \$0.00
Docketing Clerk Chris Lengemann – 0.0 hours x \$0	= \$0.00
Total Reasonable Fee	= <u>\$53,238.50</u>

This Court’s independent review of the provided documentation does not support any adjustment based on the *Kerr* factors. Thus, the Court declines to adjust the lodestar in this case.

### IV. CONCLUSION

It is therefore ordered that IDS’ Motion for Attorneys’ Fees and Memorandum of Costs (dkt. no. 57) is granted. The Clerk of the Court is directed to enter judgment in favor of Plaintiffs and against Defendants in the amount of \$53,238.50 for attorneys’ fees. The Clerk is directed to close this case.

DATED THIS 12<sup>th</sup> day of May 2014.

  
 MIRANDA M. DU  
 UNITED STATES DISTRICT JUDGE